

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

EDDIE CLARENCE BOYD,

Plaintiff,

V.

Lieutenant TOMMY EDWARDS, et al.,

Defendants.

CIVIL ACTION NO. 5:13-CV-269 (MTT)

ORDER

Before the Court is the Recommendation of Magistrate Judge Charles H. Weigle on the Defendants' motion to dismiss. (Doc. 23). The Magistrate Judge recommends dismissing the complaint for failure to exhaust administrative remedies. Specifically, the Plaintiff failed to appeal the denial of his original grievance as untimely. The Plaintiff has objected to the Recommendation. (Doc. 25).¹ Pursuant to 28 U.S.C. § 636(b)(1), the Court has considered the Plaintiff's objection and has made a de novo determination of the portions of the Recommendation to which the Plaintiff objects.

As noted above, it is recommended that the complaint be dismissed because the Plaintiff failed to “complete the administrative review process” by filing an appeal. *Woodford v. Ngo*, 548 U.S. 81, 88-93 (2006). In other words, the Plaintiff failed to “properly exhaust” his administrative remedies. The Plaintiff acknowledges that he did not exhaust his administrative remedies as required by the PLRA, but he asks the Court to consider the harm done to him and excuse his failure. (Doc. 25 at 2). Because this

¹ The Plaintiff also filed an appeal (Doc. 26), which the Eleventh Circuit dismissed for lack of jurisdiction (Doc. 35). Accordingly, the Plaintiff's pending motion to appeal in forma pauperis (Doc. 31) is **DENIED as moot**.

Court lacks the discretion to waive exhaustion, the Plaintiff's request may not be granted. See *Bryant v. Rich*, 530 F.3d 1368, 1373 (11th Cir. 2008) (citing *Alexander v. Hawk*, 159 F.3d 1321, 1325-26 (11th Cir. 1998)).

The Court accepts and adopts the findings, conclusions, and recommendations of the Magistrate Judge. The Recommendation is **ADOPTED** and made the order of this Court. Accordingly, the Defendants' motion to dismiss (Doc. 15) is **GRANTED** and the Plaintiff's complaint is **DISMISSED without prejudice**. The Plaintiff's pending motion to appeal in forma pauperis (Doc. 31) is **DENIED as moot**.

SO ORDERED, this 25th day of June, 2014.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT